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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Sacramento)

In re E.G. et al., Persons Coming Under the Juvenile
Court Law.

C093785

SACRAMENTO COUNTY DEPARTMENT OF
CHILD, FAMILY AND ADULT SERVICES,

(Super. Ct. Nos. JD239467,
JD239468, JD239469)

Plaintiff and Respondent,

v.

D.C.,

Defendant and Appellant.

D.C. (mother) appeals from the juvenile court's orders suspending visitation between her and the minors. She contends the juvenile court applied the wrong standard in finding visits by mother would be detrimental to the minors. We will affirm.

BACKGROUND¹

I

Dependency Petitions

On June 28, 2019, the Sacramento County Department of Child, Family and Adult Services (Department) filed supplemental dependency petitions under Welfare and Institutions Code² section 387 naming minors K.G. (born August 2014), and twins L.G. and E.G. (born March 2017). D.C. (mother) is the presumed mother of the minors, who are the biological children of mother's ex-boyfriend G.G. and his wife C.C.; G.G. and C.C. are separated and the minors originally lived with G.G. The minors had been placed with mother on April 4, 2019, after the juvenile court found allegations true in petitions filed earlier, under section 300, subdivision (b)(1), based on G.G.'s domestic violence, substance abuse, and other issues threatening the safety of the minors. The supplemental petitions alleged mother permitted unauthorized contact between G.G. and the minors in June 2019, and that during these contacts G.G. had violent outbursts threatening mother and the minors. On November 4, 2019, the juvenile court sustained the supplemental petitions, placed the minors with the department, and ordered regular visitation with G.G. and mother "consistent with the children's well-being."

On October 23, 2020, the department filed a section 388 petition requesting the juvenile court change the November 4, 2019 visitation order, seeking to "suspend visits" between mother and K.G. for the minor's emotional well-being. The petition attached statements from K.G.'s therapist, social worker, and caretaker describing events and behaviors from September 2019 to September 2020. These statements indicated K.G.

¹ Because mother's sole claim challenges the suspension of visitation between her and the minors, we limit the background summary to facts and procedure relevant to this issue.

² Undesignated statutory references are to the Welfare and Institutions Code.

had severe mental, emotional, and behavioral issues after visits with mother resulting in the therapist moving sessions to be held immediately after these visits. K.G. would also “consistently refuse visitation” with mother, was being aggressive towards her sisters, and the caretaker also said K.G.’s behavior “improved 100%” when visits with mother were limited over the holidays due to various issues. In September 2020, the supervising social worker summarized the reports as “[K.G.] has severe [mental health] issues and reported that visits [between] the child and [mother] seems to exacerbate the [mental health] issues.”

K.G. also “disclosed alleged sexual abuse and inappropriate sexual behavior perpetrated” by mother. K.G. told the social worker in August 2020 that mother “had made [K.G.] watch [mother] touch herself in her private parts one time.” K.G. explained to the social worker and a police detective that K.G. tried to leave, but mother “stop[ped] her from leaving the room and grabbed her by the arm and made her continue to watch.” K.G. also exhibited inappropriate sexual behavior, including putting her finger in a “sister’s private area,” which she said she learned from “mommy,” and kissing a friend nude under a play structure.

On November 6, 2020, the juvenile court continued the hearing on the section 388 petition so that there could be one combined trial for that petition and the section 366.21 subdivisions (e) and (f) hearings. In the meantime, the juvenile court suspended visitation with mother, finding them “detrimental” to K.G. given the information the court had at the time.

II

Contested Hearing

Over several days in February and March 2021, the juvenile court held the combined trial under sections 388 and 366.21, subdivisions (e) and (f). The court considered reports prepared by the social workers and court appointed special advocate (CASA), as well as testimony of several witnesses.

A. Reports Considered

The first report was the July 2020 section 366.21, subdivision (e) report, which noted K.G. engaged in “self injurious behavior in order to avoid speaking with [mother]” and that mother made statements to K.G. “which aroused negative emotional responses, i.e. ‘your hair is dirty’ and ‘don’t wear make-up.’ ” The report also stated that, “[d]uring the reporting period, there were consistent problems” with mother’s visitations: “[K.G.] frequently refused calls. She would tantrum, cry, scream and refuse to sit down for the call. [E.G.] and [L.G.] often mimicked this behavior, which created chaos around visitation time.” The social worker tried many interventions to encourage the minors to participate, but the “interventions were predominantly unsuccessful.”

The juvenile court also considered the September 2020 section 366.21, subdivision (f) report, which noted the allegations of sexual abuse against mother and K.G.’s inappropriate touching of L.G. and E.G. The report also included K.G.’s therapist’s conclusion that “it is not advisable to progress visitation with [mother] at this time, given the challenges experienced by the child, [K.G.], following visitation in addition to recent allegations that have arisen pertaining to [mother].” The report found there is a “high” risk of abuse or neglect to the children if returned to mother because of the concerns pertaining to visitations with the children. In addition to K.G.’s disruptive behavior, the “trauma experienced by all of the children has led to a resurgence of behaviors in [E.G.] and [L.G.] Given the challenges around [mother’s] visitation, she has not yet progressed to unsupervised contact with the children.”

K.G.’s CASA also filed a report on February 19, 2021. The report noted K.G. rarely talks about mother and K.G. gets “anxious and worried about her sisters when they are on visits with [mother].” Even seeing mother from afar when she was visiting only with the twins made K.G. “have an increase in negative behaviors” and “[r]ecently, one sister has not wanted to attend her visits with [mother].” The CASA concluded that she “believes it remains in [K.G.’s] best interest to not visit with [mother].”

Finally, the Department filed section 342 subsequent petitions alleging there was sexual abuse against the minors or there is a substantial risk of sexual abuse against the minors based on mother's abuse of K.G. The juvenile court considered the reports for this petition, which included additional evidence concerning the time mother made K.G. watch her "plac[e] two fingers inside her vagina and prevent[ed] [K.G.] from leaving," and K.G.'s later sexualized behavior towards her sisters and friend.

B. Hearing Testimony

At the hearing, the caretaker testified that visits with mother were suspended with K.G. because of the emotional problems they caused and ended when K.G. "poked her sister in the neck with a pencil during the visit, so that was the last event." She also described K.G.'s reticence of attending virtual visits or having calls with mother and that the twins sometimes wouldn't want to talk with mother, even though the caretaker and social workers tried to encourage the children to speak with mother. The caretaker also testified that K.G. acted out towards E.G. and L.G. because she was jealous of their visits. But she also said that now L.G. has had negative behaviors of her own after visits with mother, saying "[t]here is always, you know, a difference after the visits," including that she has started wetting the bed again after in-person visits with mother and "her behavior is very naughty." School staff also told the caretakers the children were defiant after visits with mother. This behavior did not occur after visits with G.G.

K.G. also told the caretaker she saw mother stick "her finger in herself." K.G. had "terror in her face and in her eyes" when recounting the event. The caretaker guessed this happened sometime between April and June of 2019, before they were removed from mother. The caretaker also testified that E.G. and L.G. told her K.G. "poked me in my butt," which K.G. admitted to. K.G. called this "to play mommy." The girls sometimes called their vaginas their butts, so the caretaker wasn't sure where K.G. was touching her sisters. The caretaker also described finding K.G. and her friend kissing naked.

The caretaker said she ultimately would not encourage visits with mother and the children because “[i]t’s too stressful for the children, and it’s too stressful for me. The kids are always in an uproar. . . . [W]hen the mom’s meetings are involved, it’s just everything is in an uproar. [K.G.] is having her tantrums and doing the self-harming to herself. The twins are just doing anything and everything, and it’s just too much.” Because of this, if visitation with mother was ordered, she would ask the children to be removed from her home.

The children’s therapist testified that K.G.’s behavior improved when visits with mother stopped but deteriorated when her sisters visited mother, saying there was a “lot of jealousy,” aggressive behavior, and “[m]ore challenges with her regressing and acting a lot younger than her age.”

Finally, three social workers testified. Two of them testified that visits were never terminated because of mother’s conduct and that she behaved appropriately during them. A third social worker testified the Department was going to recommend suspending visitations between E.G. and L.G. as well and the plan would be to “find[] out the resolution of the current allegations” and then “stabilize the girls’ mental health with their services . . . and then introduce visitations with mom, again, via therapeutic visitations.” Finally, she acknowledged the court had previously ordered a second round of counseling for mother but that “unfortunately, it did not [happen]. It was an oversight.”

C. Court’s Ruling

The juvenile court first found return of the children would create a substantial risk of detriment and accepted the Department’s stipulation that mother was not provided reasonable services. The court ordered “reunification services [be] continued for [mother]” but then ordered “visitation be suspended with [mother] for all three of her children.” The court found visitations with K.G. more straightforward, based on the emotional harm she was suffering and the credible evidence of sexual abuse by mother against K.G., “it would be emotionally detrimental to [K.G.] to continue to have visits

with [mother].” It continued, “the twins are a bit harder,” but the court still found “the Department has shown that visits with the twins would be detrimental.” It acknowledged “it’s hard to identify where the line ends from that being causally connected by [mother’s] actions or by [K.G.’s] reactions to them having visits [¶] I think there’s some evidence that it’s the visits themselves, given the timing of the increased aggression and bedwetting happened at the same time that the in-person visits resumed. [¶] I think it’s also relevant that the twins know what happened with [K.G.] and [mother], right? They played the ‘mommy game’ where [K.G.] touches them inappropriately.” The court also acknowledged the past trauma that led to the dependency proceedings, so “because of that trauma and history and because of the law’s preference to keep siblings together for very good reasons, the fact is that the twins are clearly suffering emotional harm by continuing to have visits with [mother].” It found the line between K.G. and mother “legally irrelevant,” because “they are suffering emotional harm because of the visits. And it would be clearly to me not be in their best interest to continue to have visits with [mother].” Therefore, the court granted the section 388 petition, struck the general visitation order for the section 366.21, subdivisions (e) and (f) orders, and ordered “therapeutic visits only when deemed appropriate by the children’s therapist.”

DISCUSSION

Mother contends the juvenile court failed to make a detriment finding supported by clear and convincing evidence. She asserts that the juvenile court applied the preponderance of the evidence standard under section 388 instead of the higher standard of clear and convincing required for permanently suspending all visits. At this appropriate standard, she contends, there was not sufficient evidence that the visits were a detriment to the children because the only relevant evidence is K.G.’s jealousy of E.G.’s and L.G.’s visits, which is not enough.

The Department counters that the children’s behavior after visits with mother establishes the visits were detrimental under a clear and convincing standard. This

included fighting between the siblings, regression in physical and mental development, and acting out in school. The past abuse of K.G. and the resulting sexualized behavior of the children further establishes detriment, especially for K.G. The Department also contends the suspension is not permanent.

I

Legal Standards

Visitations between a parent and child are important “to maintain the ties between the parent . . . and the child, and to provide information relevant to deciding if, and when, to return a child to the custody of his or her parent” (§ 362.1, subd. (a).)

Consequently, “[v]isitation shall be as frequent as possible” (§ 362.1, subd. (a)(1)(A).) But “[n]o visitation order shall jeopardize the safety of the child” because visitation must be “consistent with the well-being of the child.” (§ 362.1, subd. (a)(1)(A), (B); § 366.21, subd. (h) [“The court shall continue to permit the parent or legal guardian to visit the child pending the hearing unless it finds that visitation would be detrimental to the child”]; § 366.22, subd. (a)(3) [same].) “ ‘[W]ell-being’ includes the minor’s emotional and physical health.” (*In re T.M.* (2016) 4 Cal.App.5th 1214, 1219 (*T.M.*); see also *In re Matthew C.* (2017) 9 Cal.App.5th 1090, 1102 (*Matthew C.*).

There is some disagreement as to whether an “abuse of discretion” or “substantial evidence” standard applies to reviews of orders suspending visitation. (*T.M.*, *supra*, 4 Cal.App.5th at p. 1219.) However, many courts that note this disagreement simply apply both standards or just apply the substantial evidence standard. (*Ibid.* [“Under either standard, however, we find the order was proper”]; *Matthew C.*, *supra*, 9 Cal.App.5th at p. 1101, fn. 7 [“we need not reach this issue, as we would come to the same conclusion under any of the articulated standards”]; *In re F.P.* (2021) 61 Cal.App.5th 966, 973 [“We review the juvenile court’s finding that visitation would be detrimental under the substantial evidence standard”].) So “it is unclear ‘whether the two standards are so different in this context.’ ” (*T.M.*, at p. 1219.)

There is also some question as to the appropriate standard at the juvenile court level and whether that requires further alteration of our standard of review. The parties here agree that we must apply a heightened substantial evidence standard because the juvenile court could only suspend visitations if it found clear and convincing evidence of detriment to the minors. We do not agree with the parties on this point.

In *In re Manolito L.* (2001) 90 Cal.App.4th 753 (*Manolito L.*), a different panel of this court found that a “juvenile court should apply the preponderance of the evidence standard to adjudicate whether visitation would be detrimental to the child under” the dependency status review hearing statutes. (*Id.* at pp. 761-762.) It also found this standard applies when visitation changes are sought through a section 388 petition. (*Manolito L.*, at p. 760.) This conclusion was grounded on: (1) Our Supreme Court has determined preponderance of the evidence applies to section 388 petitions and there is no indication the Legislature intended various standards of proof depending on the issues adjudicated in a section 388 petition; (2) dependency proceedings are held under the Evidence Code, and under this code preponderance of the evidence applies whenever a standard is not provided; and (3) the Legislature has explicitly required a clear and convincing standard elsewhere but provided no standard for finding visitations detrimental. (*Manolito L.*, at pp. 760-761.) We find this case on point, its reasoning persuasive, and we are unable to find any case providing contrary reasoning, so we adopt and apply it here.³

Mother offers *In re Mark L.* (2001) 94 Cal.App.4th 573 for support, which affirmed a trial court’s finding “by clear and convincing evidence” that visitation would

³ We note that mother cites *Manolito L.* only in passing once and to support a contrary finding that “at the conclusion of the evidentiary hearing the juvenile court is required to make a detriment finding based on clear and convincing evidence.” *Manolito L.* does not support this proposition.

be detrimental. (*Id.* at p. 580; *id.* at pp. 580-581.) But the court there did not conclusively determine that was the appropriate standard. Instead, it noted *Manolito L.*'s finding that preponderance of the evidence was the appropriate standard and stated “[w]hether the test at the trial court is preponderance of the evidence or clear and convincing evidence, a substantial evidence standard of review applies on appeal” because “ ‘ “the clear and convincing test disappears” ’ ” on appeal. (*In re Mark L.*, at pp. 580, 581, fn. 5.) This general reasoning was disapproved of by the Supreme Court in *Conservatorship of O.B.* (2020) 9 Cal.5th 989, which found a more rigorous substantial evidence analysis must be employed when reviewing trial court findings made under the clear and convincing evidence standard. (*Id.* at pp. 1005, 1010, fn. 7.)

The Department’s concession on the clear and convincing evidence standard is based on this finding in *Conservatorship of O.B.*, stating the Supreme Court “has held that the standard of review on appeal regarding parental visitation should be the substantial evidence standard, and the burden of proof that is applicable at the trial court level is clear and convincing evidence.” The Supreme Court never made this determination, nor did it even analyze the proper standard for suspension of visitation. *Conservatorship of O.B.* dealt with an appeal from the grant of a limited conservatorship. (*Conservatorship of O.B.*, *supra*, 9 Cal.5th at pp. 995-996.) The statute for conservatorships provides: “[S]tandard of proof for the appointment of a conservator pursuant to this section shall be clear and convincing evidence.” (Prob. Code, § 1801, subd. (e).) We do not find *Conservatorship of O.B.* requires a divergence from the typical substantial evidence standard in visitation cases. (See *In re F.P.*, *supra*, 61 Cal.App.5th at pp. 973-974 [applying the traditional substantial evidence standard after *Conservatorship of O.B.*].)

There is one final additional case that has created confusion on this topic, which is also cited by mother. In *In re Dylan T.* (1998) 65 Cal.App.4th 765, the court found “[i]t must be demonstrated by clear and convincing evidence that visitation with the

incarcerated parent would be detrimental to the minor.” (*Id.* at p. 774.) The key limitation of *In re Dylan T.* is “incarcerated parent.” There are different statutes applied to incarcerated parents in dependency proceedings. As *Manolito L.* found, these statutes require “that reasonable reunification services, including visitation, be provided to a parent or guardian who is incarcerated or institutionalized ‘unless the court determines, *by clear and convincing evidence*, those services would be detrimental to the child.’ ” (*Manolito L.*, *supra*, 90 Cal.App.4th at p. 761, original italics.) This standard is omitted from the statutes relevant to this case. (*Ibid.*)

Thus, without conclusively determining abuse of discretion is not the appropriate standard, we will apply the typical substantial evidence review here to analyze a preponderance of the evidence decision. “In so doing, we consider the evidence favorably to the prevailing party and resolve all conflicts in support of the trial court’s order. [Citation.] ‘Substantial evidence’ means evidence that is reasonable, credible and of solid value; it must actually be substantial proof of the essentials that the law requires in a particular case.” (*In re Yvonne W.* (2008) 165 Cal.App.4th 1394, 1401.)

II

Analysis

The detriment to K.G. was clearly supported by substantial evidence. The caretaker, therapist, CASA, and social workers all noted “severe” negative behaviors resulting from K.G.’s visits with mother. This included self-harm, mental and emotional harm, and negative actions towards her sisters. K.G. deteriorated so significantly after visits with mother the therapist moved their sessions to the same day as visits with mother. Most alarmingly are the allegations of mother’s sexual abuse of K.G. There is evidence this abuse has led K.G. to “play mommy” by touching her sisters inappropriately and still negatively effects K.G.’s emotional well-being. And though the abusive event may have been in the past, this does not mean it does not continue to harm K.G., especially if she has further opportunity to be reminded of it when visiting mother.

Finally, there was a lot of evidence in the social worker reports and testimony at the hearing that K.G. did not want to continue visits with mother. (*In re Julie M.* (1999) 69 Cal.App.4th 41, 51 [child's aversion to visiting an abusive parent is proper factor for consideration in administering visitation so long as it is not "the sole factor"].) From this, there is substantial evidence supporting the juvenile court's finding visitations with mother are detrimental to K.G.'s well-being.

There is also evidence supporting detriment to the twins, even if it is not as extreme as the evidence for K.G. The caretaker testified all the girls are "in an uproar" when mother has visits, including the twins being defiant at school and L.G. specifically being "very naughty." L.G. also at least expressed her disinclination towards visiting with mother and has started to wet the bed again after visits with mother. K.G. is also more aggressive towards E.G. and L.G., including K.G. poking one of the sisters in the neck with a pencil and touching both sisters inappropriately. The caretaker and therapist both testified that K.G.'s behavior towards the twins was because they were able to visit with mother and K.G. had some "jealousy." Thus, there is substantial evidence that mother's visits with all three minors are detrimental to them.

Mother argues strenuously that harm to E.G. and L.G. is based solely on K.G.'s behavior, and that mother's behavior and the visits themselves are not detrimental to E.G. and L.G. We are unpersuaded. First, some of the evidence described above is evidence of direct harm to E.G. and L.G., as they act out and have other negative behaviors correlating with visits. Second, mother's past and current behavior towards K.G. is also underlying the harm visits are causing E.G. and L.G. Regardless of the direct applicator of harm, whether it's K.G. or mother, it is clear the catalyst is E.G.'s and L.G.'s visits with mother. The statutes do not require us to perform the intellectual exercise deducing the exact proximity between mother's actions and the resulting detriment. What matters is that a harm occurs because of the visits. The central concern of dependency proceedings is "the well-being of the child: 'While visitation is a key element of

reunification, the court must focus on the best interests of the children “and on the elimination of conditions which led to the juvenile court’s finding that the child has suffered, or is at risk of suffering, harm.” ’ ’ ” (*T.M., supra*, 4 Cal.App.5th at p. 1220; see also *In re S.H.* (2003) 111 Cal.App.4th 310, 317 [“[i]t is the juvenile court’s responsibility to ensure regular parent-child visitation occurs while at the same time providing for flexibility in response to the changing needs of the child and to dynamic family circumstances”].) So we must ultimately ask, would allowing visitations to continue between mother and E.G. and L.G. be detrimental to E.G. and L.G.? We must respond affirmatively. There is substantial evidence the twins would be harmed if visits continued regardless of the particular causal steps involved.

Finally, contrary again to mother’s assertions, the juvenile court did not permanently terminate visitation. Instead, it “suspended” general visitations and ordered therapeutic visitations when deemed appropriate. It also ordered additional reunification services for mother. On the record before us, the juvenile court has not set a hearing to terminate parental rights. Thus, “ ‘there will be subsequent hearings, and therefore ample opportunity for the juvenile court to revisit the appropriateness of visitation in light of new circumstances.’ ” (*Matthew C., supra*, 9 Cal.App.5th at p. 1105.)

DISPOSITION

The juvenile court's orders suspending visitation between D.C. and K.G., E.G., and L.G. are affirmed.

BLEASE, Acting P. J.

We concur:

ROBIE, J.

HOCH, J.